

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

KENNETH PUND, <i>et al.</i>	:	Case No. 16-cv-1076
Plaintiffs,	:	Judge Benita Y. Pearson
v.	:	
CITY OF BEDFORD, OHIO, et al.	:	
Defendants.	:	
	:	

**PLAINTIFFS' NOTICE OF DISCOVERY DISPUTE AND
REQUEST FOR JUDICIAL INTERVENTION**

Come now the Plaintiffs, by and through undersigned counsel, and pursuant to Local Rule 37.1 (a)(1) hereby tenders this Notice of Discovery Dispute, and requests the Court's intervention. As set forth below, Plaintiffs' counsel certifies that they have made sincere, good faith efforts to resolve this dispute, to no avail.

On January 31, 2017, Plaintiffs served Defendants with the discovery requests currently before the Court as Doc. 27-1. For over seven months, Defendants have refused to supply any response whatsoever.

Plaintiffs have made numerous requests for the foregoing discovery responses. *See* Exhibit, Plaintiffs' Emails to Defendants and Defendants' Responses.¹ In each instance, the Defendants' respond with something to the equivalent to "any day now..." *Id.*²

Responses to these requests are instrumental to the ultimate resolution of this case: Plaintiffs are prepared to move for summary judgment on all remaining issues in this matter, but are hindered by Defendants' refusal to provide the evidence necessary to resolve this case. For instance, the amount of restitution owed, and to whom it is owed, is a subject for summary judgment; but those facts it must be determined through reference to the evidence contained in the Defendants' discovery responses.

The proposed scheduling order was stymied by the Defendants' intransigence, ultimately resulting in a proposed scheduling order that only begins once the Defendants provide responses to the January 31, 2017 discovery requests.

Plaintiffs are convinced that, in the absence of judicial intervention, this case will drag on interminably. Accordingly, Plaintiffs respectfully request that the Court intervene as set forth in Local Rule 37.1.

Respectfully submitted,

/s/ Maurice A. Thompson

Maurice A. Thompson (0078548)
1851 Center for Constitutional Law
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¹ Plaintiffs respectfully submit that these efforts constitute good faith efforts to confer with the party failing to make discovery. Accordingly, Plaintiffs certify that sincere, good faith efforts to obtain this discovery without court action have been made.

² Additionally, on August 17, 2017 Plaintiffs filed a Motion to Compel relative to this same dispute (Doc. No 37). Although the Court found the motion untimely, to date, Defendants have made no effort at supplying any response to the discovery.

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FINNEY LAW FIRM, LLC
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2017 the foregoing Notice of Discovery Dispute and Request for Judicial Intervention was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system.

/s/ Maurice A. Thompson

Maurice A. Thompson (0078548)
Christopher P. Finney (0038998)

EXHIBIT

From: Maurice Thompson <mthompson@ohioconstitution.org>
Sent: Friday, August 04, 2017 4:46 PM
To: 'Eric Smearman'; 'Gary Werner'
Cc: 'Kallen Boyer'; 'John Montello'; Christopher P. Finney
Subject: RE: Pund v. Bedford - Proposed Status Report

Counsel:

Go ahead and send the responses to our Interrogatories now. That will help us provide direction on how this evidence should be formatted.

With respect to Request for Production Number 2, please provide us with the "applications" for inspections themselves, without more. In a parallel case, the City of Oakwood provides us with one PDF document containing all inspections in alphabetical order. That was helpful to the Court in that case, and I would suggest the same be done here.

Maurice A. Thompson
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From: Eric Smearman [mailto:res@smithmarshall.com]
Sent: Friday, August 4, 2017 9:11 AM
To: Maurice Thompson; 'Gary Werner'
Cc: Kallen Boyer; 'John Montello'; chris@finneylawfirm.com
Subject: Re: Pund v. Bedford - Proposed Status Report

Maurice –

We have been working on the discovery, and especially the documents. Our plan is to have the documents scanned electronically and produced on a CD or flash drive. I am hopeful that this will be accomplished by the end of next week.

Eric Smearman
Smith Marshall, LLP
440-243-4994

7251 Engle Road, Suite 404
Middleburg Heights, OH 44130

www.smithmarshall.com

From: Maurice Thompson <mthompson@ohioconstitution.org>
Date: Wednesday, July 12, 2017 at 4:04 PM
To: Eric Smearman <res@smithmarshall.com>, 'Gary Werner' <GWerner@bernsockner.com>
Cc: Kallen Boyer <kld@smithmarshall.com>, John Montello <jmontello@bedfordlawyers.com>, "chris@finneylawfirm.com" <chris@finneylawfirm.com>
Subject: RE: Pund v. Bedford - Proposed Status Report

Counsel:

We prefer PDFs with whatever coherent form of number makes sense. This litigation is probably best served by providing the inspection "applications" chronologically rather than alphabetized by last name of the homeowner.

In the interim, we'd appreciate if you could supply the responses to our interrogatories.

Maurice A. Thompson
Executive Director
1851 Center for Constitutional Law
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Tel: (614) 340-9817
www.OhioConstitution.org

From: Eric Smearman [<mailto:res@smithmarshall.com>]
Sent: Wednesday, July 12, 2017 3:04 PM
To: Maurice Thompson; 'Gary Werner'
Cc: Kallen Boyer; 'John Montello'; chris@finneylawfirm.com
Subject: Re: Pund v. Bedford - Proposed Status Report

Maurice –

We recently just received the balance of the responsive documents, and are finalizing the redaction of some citizen's social security numbers that were missed by the City clerk. There will be an issue with emailing the documents as the records fill over two boxes and comprise about 5 to 7 reams of paper.

I am proposing to scan the documents with Bates stamp for reference and email them to you. Or, we can make copies and have them available for you to retrieve from my office.

Let me know your preference regarding the documents.

Eric Smearman
Smith Marshall, LLP
440-243-4994

From: Maurice Thompson <mthompson@ohioconstitution.org>
Date: Tuesday, July 11, 2017 at 7:16 PM
To: Eric Smearman <res@smithmarshall.com>, 'Gary Werner' <GWerner@bernsockner.com>
Cc: Kallen Boyer <kld@smithmarshall.com>, John Montello <jmontello@bedfordlawyers.com>, "chris@finneylawfirm.com" <chris@finneylawfirm.com>
Subject: RE: Pund v. Bedford - Proposed Status Report

Counsel:

We still have not received responses to our discovery requests posited to the Defendants in this case in February.

It's possible there has simply been a mix-up. Whatever the case, please forward those response by the end of the week (preferably by email), as we would prefer to obtain those responses voluntarily without resort to a motion to compel.

If there has been a misunderstanding, please do let us know.

Thank you for your attention to this matter.

Maurice A. Thompson
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